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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9364-HII(2)-2022/14573.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 13/2017 dated 16.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh between :

PRESIDENT/GENERAL SECRETARY, CHANDIGARH GOVT. TRANSPORT WORKERS UNION (Workers' Union)

AND

1. THE SECRETARY TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, UNION TERRITORY CHANDIGARH.
2. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, CHANDIGARH (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9364-HII(2)-2017/2342, dated 06.02.2017.

AWARD

1. *Vide* Endorsement No.13/1/9364-HII(2)-2017/2342 Dated 06.02.2017 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 10.05.2016 in respect of Sukhjinder Singh S/o Shri Ajit Singh, Driver No.16-A, Depot No.II, CTU (OBC Category) and Karam Singh S/o Late Shri Lachman Singh, Driver No. 21-A, Depot No.II, CTU (General Category) (*hereinafter in short referred "workmen"*) raised by the President / General Secretary, Chandigarh Govt. Transport Workers Union, Chandigarh (*hereinafter in short referred "workers' union"*) upon the Secretary Transport, Chandigarh Transport Undertaking, U.T. Chandigarh and the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh (*hereinafter in short referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID Act"*) in following words:-

Signature Not Verified
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Jatinder Kumar
Date: 28/10/2022
15:16:52 IST
Reason: Published
Location:

"Whether the demand raised in the demand notice dated 10.05.2016 by President / General Secretary, Chandigarh Govt. Transport Workers Union to (i) The Secretary Transport, Chandigarh Transport Undertaking, UT Chandigarh (ii) The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

(1005)

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2. Upon notice, the workers' union appeared through its representative Shri J. R. Syal. Statement of claim was filed on 16.10.2017. Briefly stated the facts of statement of claim are that the case of the workmen was sponsored by the workers' union in a meeting held on 05.10.2016, wherein it was unanimously resolved that injustice has been done with the workmen at the hands of the management. Since the case of the workmen has been jointly sponsored, workmen are submitting joint claim before this Court.

3. The workmen were appointed as Drivers in the year 1998 after being duly sponsored by the Employment Exchange. Earlier also, on 30.05.2007, the workmen were illegally terminated and that termination was set aside *vide* awards dated 21.04.2015 of the Presiding Officer, Industrial Tribunal and Labour Court, U.T. Chandigarh. Thereafter both the workmen have been performing their duties on contractual basis. After the appointment of the workmen, the CTU management has appointed a number of Drivers on regular basis, but the services of the aforesaid workmen have not been regularized, till date. Both the workmen have, therefore, been suffering as far as their status is concerned and also financially. In the year 1998, the management was in the dire need of Drivers due to shortage of staff and most of the posts were lying vacant. For appointment of Drivers a requisition was also sent to the Employment Exchange. The names of the workmen were duly sponsored by the Employment Exchange for their appointment as Driver. A selection committee was constituted for the appointment of Drivers. The workmen were fulfilling the requisite qualification for appointment as Drivers and were duly selected and recommended for appointment by the selection committee. The workmen were got medically examined and thereafter a letter of appointments was issued on 11.12.1998 initially for a period of 89 days against vacant post. The workmen Sukhjinder Singh and Karam Singh joined in the month of December 1998 and were allotted Driver No.16-A and Driver No.21-A respectively. Though the workmen were selected and appointed through proper channel and against the vacant posts, but they were given appointment on temporary basis for 89 days.

4. In the year 1999, the management was going to terminate the services of the aforesaid workmen so they were forced to approach the Central Administrative Tribunal, Chandigarh by way of O.A. No.678/CH/1999 for stay against these illegal termination, in which order was passed to the effect that the services of the workmen be not terminated till the regularly selected Drivers are not appointed and all the regular posts are not filled. Thereafter the management allowed the workmen to work against vacant posts till 30.05.2007 though vacant posts were still lying vacant. After the year 1999, the management appointed regular Drivers in the year 1999 to 2006 but the workmen were continued to work regularly with effect from December, 1998 to 30.05.2007. The workmen challenged the illegal orders of termination dated 30.05.2007 on the grounds that vacant posts were still lying vacant when services of the workmen were terminated and further took the grounds that termination is illegal and against the provisions of Section 25-F, 25-H, 25-G and 25-N of the ID Act. The Labour Court set aside the order of illegal termination of the workmen and the workmen were reinstated with continuity of service and 50% and 25% back wages. The management challenged these orders of the Labour Court before Hon'ble High Court by way of Civil Writ Petitions and same were also dismissed. Thereafter, management filed LPAs and LPAs were admitted only qua quantum of back wages and claim regarding reinstatement with continuity was upheld and the same are still pending before the Hon'ble High Court for adjudication. After interim order in LPAs the management allowed the workmen to rejoin their duties on 17.10.2014 and 05.03.2015 and till date the workmen are working with diligence and devotion with the management. In view of the above facts, the workmen are deemed to be continuing in service with effect from December 1998 till date and have served continuously for more than 19 years, against the vacant posts. On 10.04.2006 full bench of Hon'ble Supreme Court in case titled as 'Uma Devi' gave direction in para 53 of the judgment that all those employees who have completed 10 years of service even though their initial appointment was irregular are entitled for regularization of their services against vacant posts if they fulfill the eligibility for appointment. It was further made clear that eligibility for regularization is to be taken as same was at the time of initial appointment as daily wager, adhoc, temporary and contractual basis. In pursuance of above judgment of Hon'ble Supreme Court, Chandigarh Administration issued instructions dated 13.03.2015 in which it was decided to regularize the services of all those employees who have completed 10 years continuous service. The Drivers who have completed more than 10 years service in December, 2008, therefore, they were

fully eligible for regularization of their services as per these instructions as well as judgment of Hon'ble Supreme Court passed in Uma Devi's case (supra). Cut off date of joining on temporary basis have been declared illegal by our Hon'ble High Court in a judgment as reported in 2001(3) SCT 321 and it has been held that for regularization the requisite number of years have to be seen on the date instructions are issued and cut off date of initial appointment cannot be imposed being in violation of Article 14 and 16 of the Constitution of India. The workmen have completed more than 19 years of service and have become overage for Government service elsewhere. Therefore, the workmen are entitled for regularization of their services due to acts and conducts of the management. It has been held in the judgment by the Hon'ble Supreme Court that the persons who have been working against the same post for 14 years they are entitled to regularization of their service because there is presumption that work is of continuing nature and vacant post is lying vacant. The action of the management amounts to unfair labour practice because the management though selected the workmen as per rules against the vacant posts by regular selection but treating them contractual / daily wager for years together. Action of the management is also illegal and amounts to unfair labour practice as other workmen appointed after selection have been given regular appointments and were enjoying the regular status but the workmen though appointed earlier are being treated as appointed on contract basis. The workmen have made several requests to the management to regularize their services but the management has not taken any step in this respect till date. Prayer is made that the claim statement may be accepted with a direction to the management to regularize the services of the workmen on completion of 10 years service from their initial appointment with effect from December 2008 and to pay the difference of pay along with interest @12% per annum from the date same were due till its realization.

5. On notice, management No. 1 & 2 appeared through its authorized representative and contested the claim of the workers' union by filing joint written statement on 26.03.2018, wherein preliminary objections are raised on the ground that the present statement of claim is not maintainable and liable to be dismissed on the ground that the same has been preferred at highly belated stage. The workmen have no locus standi and cause of action to file the present claim as the terms and conditions of their appointment were very clear that they are appointed on the consolidated salary purely on temporary basis and it was made clear that these services are not liable to be regularized at any time during span of their service. The present claim statement is not maintainable and liable to be dismissed on the ground of Res-judicata as the workmen have already claimed their regularization through O.A. No.1159/CH/2004 before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench which was disposed of *vide* order dated 24.05.2006 whereby the Hon'ble CAT has duly considered the issue of regularization and rejected the same. The workmen have not challenged this judgment and accepted the same and hence they have been working under the management on the same terms & conditions as envisaged in their appointment letter. If the workmen were aggrieved to the order dated 24.05.2006 then in that case they ought to have challenged the validity of the said order before the next higher court.

6. On merits, the facts regarding shortage of Drivers in the year 1998, requisition sent to Employment Exchange and Sainik Board for sending names of eligible candidate for appointment are admitted being a matter of record. However, it is stated that all the workmen were appointed on the contract basis and their services are not liable to be regularized at all. All the Drivers joined their services in the year 1998. The terms and conditions of the contract were very clear whereby it was clearly stipulated that the workmen are appointed only for a period of 89 days on the contract basis and they can be terminated at any time without assigning any notice. The services of the workmen were dispensed with on 29.05.2007, when the regular incumbents became available to the management. Further *vide* the award dated 21.04.2015 passed by this Court, the workmen were ordered to be reinstated against the vacant post. Earlier the services of all the contractual drivers were dispensed with *vide* office order passed in July, 1999 on completion of 89 days of their service but the workmen approached to the Hon'ble CAT by filing O.A.No.678/CH/1999 and O.A. No.1159/CH/2004, which passed an interim order dated 02.09.1999 whereby all the contractual Drivers were ordered to be allowed to work against their job till regular candidates became available and finally these O.As were decided *vide* order dated 30.01.2002 whereby the management was directed to allow work to the workmen against vacant post till

regular incumbents. Thus, the workmen were allowed to work in compliance of the aforesaid judgment till the regular incumbents became available to the management. In this way, the workmen are forced employees of the management. The answering management has been appointing Drivers on the regular basis through the different advertisements and the workman also participated in the recruitment process on the regular basis and they failed and could not compete the merit hence, they were not appointed on the regular basis. However, no court of law has ordered to regularize their services and at every time they are ordered to be reinstated in the services on the same terms and conditions as envisaged in their appointment letter. Therefore, their services are not liable to be regularized. In compliance with the order dated 31.01.2002 passed by the Central Administrative Tribunal, Chandigarh Bench, these workmen were allowed to work till the regular incumbents became available to the management. It is admitted as correct to the extent that the workmen were taken back in the services in compliance with the award dated 02.09.1999 passed by this Court. All these employees are taken back in service on the same terms and conditions and their services are not regularized. The workmen were appointed purely on temporary basis and terms and the conditions of the contract were reduced in writing which were duly accepted by the workmen. Now they cannot claim the regularization in their services by the rule of estoppel as they accepted the terms and conditions of the contract by putting their signature. The regular employees of the management are working with the management because they were appointed on regular basis against the vacant and sanctioned posts through the proper channel. Remaining averments of the statement of claim are denied being wrong. Prayer is made that the present claim statement may be dismissed with cost.

7. The workers' union filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the statement of claim and the averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed *vide* order dated 07.05.2018 :—

1. Whether the reference is bad on account of Res-judicata ? OPM
2. Whether the demand raised in the demand notice dated 10.05.2016 by the workers' union is genuine and justified, if so, to what effect and to what relief the workers' union / workmen are entitled to, if any ? OPW
3. Relief.

9. In evidence the workers' union examined the workman / claimant Sukhwinder Singh, Driver No.16-A as AW1 who tendered his affidavit Exhibit 'AW1/A' and also examined the workman / claimant Karam Singh, Driver No.21-A as AW2 who tendered his affidavit Exhibit 'AW2/A'. On 09.12.2019, learned representative for the workers' union tendered into evidence certified copy of order dated 10.04.2018 passed by Hon'ble Central Administrative Tribunal, Chandigarh Bench in O.A. No.060/01018/2016 titled as Paramjit Singh Versus Chandigarh Administration and another as Exhibit 'MX1'. It is pertinent to mention here that during cross-examination of MW1 Daljit Singh, the documents Exhibit 'MX2' and 'MX3' were brought into evidence. In cross-examination of MW1 stated that the documents so supplied were so produced which were available with the management and he has no objection for taking the same as Exhibit 'MX2' and 'MX3' in the present case. In reply to application under Section 151 CPC read with Section 10 of the ID Act, the management produced on record photocopy of letter dated 01.12.1998 whereby the requisition for the Drivers and Conductors staff on outsource basis was sent to the Employment Exchange, U.T. Chandigarh, appointment order dated 11.12.1998 wherein name of the workman Sukhjinder Singh, Driver No.16-A is mentioned at serial No.16 and name of Karam Singh - Driver No.21-A is mentioned at serial No.21, photocopy of award in OA No.678/CH/1999, photocopy of appointment orders of Driver Nos. as 59, 39, 485, 206, 142, 112, 174, 327, 312, 459, 188, 176 and 2, photocopy of order dated 10.04.2018 in OA No.060/01018/2016 tilted as Paramjit Singh Versus Chandigarh Administration & Another, copy of appointment order and relevant record of convicted / terminated Driver No.16 Darshan Singh, photocopy of appointment order and application form of Gurdeep Singh, Driver No.327, photocopy of giving of opportunity to the workman in regular appointment

for appearance time to time by the office were produced. All these documents were collectively exhibited *vide* 'MX2'. Document Exhibit 'MX3' copy of list of Drivers, who were appointed on regular basis with effect from 01.01.2000 to 31.12.2019. On 09.12.2019 learned representative for the workers' union closed the evidence.

10. On the other hand, the management examined MW1 Daljit Singh - Senior Assistant, Chandigarh Transport Undertaking, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 31.03.2022, learned Law Officer for the management tendered into evidence list of candidates for the post of Driver (contractual driver) in Chandigarh Transport Undertaking dated 26.05.2005 *vide* Exhibit 'M1'. On 16.08.2022 learned Law Officer for the management closed the evidence.

11. I have heard the arguments of learned representative for the workers' union and learned Law Officer for the management No.1 & 2 and perused the judicial file. My issue-wise finding are as below:-

Issue No.2 :

12. Onus to prove this issue is on the workers' union. The issues are overlapping, thus issue No.2 is taken up first.

13. Under this issue, the workers' union examined AW1 Sukhjinder Singh, Driver No.16-A, Depot No. II, CTU, who *vide* his affidavit Exhibit 'AW1/A' deposed all the material contents of statement of claim. For corroboration the workers' union examined AW2 Karam Singh, Driver No. 21-A, Depot No.II, CTU, who *vide* his affidavit Exhibit 'AW2/A' deposed to the similar effect as deposed by AW1. To support the oral evidence learned representative for the workers' union referred documents Exhibit 'MX1' to Exhibit 'MX3'.

14. On the other hand, the management examined MW1 Daljit Singh - Senior Assistant, Chandigarh Transport Undertaking, Chandigarh, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement. To support his oral version, learned Law Officer for management referred document Exhibit 'M1'.

15. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the workman were initially appointed on contract basis for 89 days *vide* appointment order No.1517/ECD/HOD/CTU/98 dated 11.12.1998. As per condition No.1 of the said appointment letter, the candidates mentioned at serial No.1 to 31 were sponsored through the Regional Employment Exchange, U.T. Chandigarh and Zila Sainik Welfare Office, U.T. Chandigarh and interviewed on 05.12.1998 to 07.12.1998 and offered appointment of Drivers in the CTU for a period of 89 days on contractual basis. As per condition No.2, their services shall automatically stand terminated after expiry of 89 days or on joining of a regular incumbent whichever is earlier without assigning any notice and no compensation of any type will be admissible to them on account of termination of their services. As per condition No.3, during the period of appointment they will get a consolidated salary of `2,462/- per month as fixed by the Deputy Commissioner, U.T. Chandigarh for daily wages employees. Further there is no dispute with regard to the fact that on completion of 89 days of services, the services of all the employees were dispensed with *vide* office order July, 1999. On aggrieved from order July, 1999, the workmen approached the Central Administrative Tribunal, Chandigarh Bench by filing OA No.678/CH/1999 and OA No. 1159/CH/2004. In OA No.678/CH/1999 interim order dated 02.09.1999 was passed. The relevant portion of order dated 02.09.1999 is reproduced as below :—

"Considering the law on this point, we modify earlier order dated 20th July, 1999 and direct the respondents to allow the applicants to work against those jobs / posts, as per their seniority, till regularly selected candidates become available with further direction that they shall not be replaced by other adhoc employees."

16. OA No.1159/CH/2004 was decided *vide* order dated 24.05.2006 passed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench whereby the applicants' prayer for regularization was rejected. The applicants in OA No.1159/CH/2004 were allowed to continue to work as Driver against vacant posts till regular candidates join. The order dated 24.05.2006 has not been challenged by any of the workman. Thereafter the management allowed the workman to work against vacant posts till 30.05.2007. After year 1999 during the period year 1999 to 2006 the management appointed regular Drivers, however, the workmen continued to work

with effect from December 1998 to 30.05.2007. The workmen were terminated on 30.05.2007. It is admitted fact of the parties, the workmen challenged the termination order dated 30.05.2007 before the Industrial Tribunal and Labour Court, Union Territory Chandigarh which set aside the illegal termination and the workmen were reinstated with continuity of service and 50% and 25% back wages *vide* award dated 21.04.2015. None of the parties brought on record copy of award dated 21.04.2005. It is further admitted fact of the parties that the CTU challenged the award of Industrial Tribunal and Labour Court, U.T. Chandigarh before the Hon'ble High Court by way of civil writ petitions, which were dismissed and thereafter the management filed LPAs against the award passed by the Industrial Tribunal and Labour Court and order dated 18.11.2013 passed by the Hon'ble High Court in CWP No.25131 of 2013. In LPA No.1315 of 2014 in CWP No.25131 of 2013 order dated 16.01.2015 was passed. The relevant portion of order dated 16.01.2015 is reproduced as below :—

"In the facts and circumstances of the case and in view of the previous orders issuing notice of motion, there is no warrant for staying the order of reinstatement.

The only question relates to back wages.

The judgment so far it orders the payment of 50% back wages shall remain stayed subject to the appellants paying the respondents 25% of back wages by 31.03.2015."

After order dated 16.01.2015, the management allowed the workman to rejoin their duties on 17.10.2014 and 05.03.2015 and till date all these workmen are working as Drivers with the management.

17. The dispute between the parties is confined to the fact that the workers' union is claiming that the workmen / Drivers are deemed to be in continuing in service with effect from December 1998 till date and they have served continuously for more than 19 years against the vacant posts. In view of the directions given in para 53 of the judgment of **Hon'ble Supreme Court in Secretary, State of Karnataka & Another Versus Uma Devi & Others, in Appeal (Civil) No.3595-3612 of 1999 decided on 10.04.2006**, all the employees who have completed ten years of service even though their initial appointment was irregular are entitled for regularization of their services against the vacant post if they fulfill the eligibility for appointment. The management has opposed the aforesaid plea of the workers' union on the ground that the judgment in case of Uma Devi is not applicable in this case the workmen were appointed purely on temporary basis and terms and conditions of the contract were reduced in writing which were duly accepted by them. Now the workmen cannot claim the regularization in their services by virtue of principle of estoppel. Moreover, the workmen have already claimed their regularization through O.A. No.678/CH/1999 and O.A 1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench wherein the issue of regularization was considered and rejected. In OANo.060/01018/2016 decided *vide* order dated 10.04.2018 by the Central Administrative Tribunal, Chandigarh Bench in application titled as Paramjit Singh Versus Chandigarh Administration and another the OA was disposed off having become infructuous. The relevant portion / para 2 of order dated 10.04.2018 / Exhibit 'MX1' is reproduced as below :—

"Considering the fact that the respondents have already conducted suitability test in which the applicant was found fit for Bus Driver subject to medical test. Therefore, the OA has been rendered infructuous and is disposed as such. The respondents will abide by the statement made by the counsel appearing on their behalf."

18. AW1 Sukhjinder Singh in his cross-examination stated that he joined CTU on 11.12.1998 as a Driver. He was selected through Employment Exchange. He was given the employment on contract basis for 89 days. In the year 1999 his services were terminated by the management. He has challenged the termination along with other co-workers by filing O.A. before the Hon'ble CAT, Chandigarh Bench *vide* OA No.678/CH/1999 wherein the Hon'ble CAT directed the respondents to allow these applicants to continue as Drivers on contract basis against the available vacant post till regular incumbent are appointed. AW1 admitted as correct that he claimed regularization through O. A. No.1159/CH/2004 before the Hon'ble CAT, Chandigarh Bench which was disposed off *vide* order dated 24.05.2006. AW2 Karam Singh in his cross-examination stated that

he joined CTU on 14.12.1998 as a Driver. The remaining version of AW2 Karam Singh during his cross-examination is to the similar effect as deposed by AW1.

19. Learned Law Officer of the management referred para 13 of the order dated 24.05.2006 passed by the Central Administrative Tribunal, Chandigarh Bench. Relevant portion para 13 of order dated 24.05.2006 is reproduced as below :—

"13. So far the plea of the applicants for their regularisation is concerned, keeping in view the latest decision of the Apex Court on this issue, we are unable to give directions to the respondents to regularize their services, irrespective of the fact that they have been working with the respondents for more than 7-8 years on contract basis. Moreover, they were afforded opportunity and, in fact, participated in the selection process, but could not qualify therein. Therefore, on this ground also, their plea of regularization falls on the ground."

20. As per the policy / scheme regularization of daily wage / work charge employee working in various departments of Chandigarh Administration issued by Chandigarh Administration, Department of Personnel, dated 10.02.2014, the **Hon'ble Supreme Court of India in the year 2006 in Civil Appeal No.3595-3612 of 1999 titled State of Karnataka Versus Uma Devi** observed that the State Government should take steps to regularize as a one time measure the services of such irregularly appointed employees who have worked for 10 years or more in duly sanctioned posts. The Government of Punjab in pursuance to the aforesaid judgment of the Hon'ble Supreme of India has issued policy instructions regarding regularization of workers working in different department on work-charge / daily wage basis, who have completed 10 years of service up to December 2006 *vide* letter No.11/8/2009-4PP3/397-98 dated 18.03.2011 provided they fulfill the requisite educational qualifications. In view of policy / scheme the workers in different department on work charge / daily wage basis were eligible for regularization if they have completed 10 years of service up to December, 2006. In the present case, the workmen were appointed on contractual basis in December 1998 and they completed only 8 years of service in December 2006. Thus, their service of 10 years was not complete up to December 2006. When the workmen filed OA No.1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, even at that time they did not complete ten years of service. Learned representative for the workers' union contended that the workmen have completed 10 years of service in the December 2008 and now they have become eligible for regularization. Learned representative for the workers' union argued that the cut off date of the joining on temporary basis has been declared illegal by our Hon'ble High Court in judgment reported as **2001(3) SCT 321 titled as Beant Kaur Versus State of Punjab** wherein it has been held that for regularization the requisite number of years have to be seen on the date of instructions are issued and cut off date of initial appointment cannot be imposed being in violation of the Constitution of India. To my opinion, the law laid down in the judgment referred titled **Beant Kaur Versus State of Punjab (supra)** is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case. Apart from completion of 10 years of service the workmen are required to qualify the selection process.

21. The management has examined MW1 Daljit Singh - Senior Assistant of CTU, who in his affidavit Exhibit 'MW1/A' categorically stated that the management has been appointing Drivers on the regular basis through the different advertisement and the workmen also participated in the recruitment process on the regular basis and they failed and could not compete the merit, hence, they were not appointed on regular basis. In cross-examination MW1 stated that the workman participated in the test in the year 2001, he qualified the driving test but he did not qualify the general knowledge test. In the year 2005 the workman did not qualify the driving test and they did not clear the same. The aforesaid version of MW1 could not be controverted by the workers' union. The aforesaid version of MW1 would prove that the workmen were provided with an opportunity to participate in the selection process but they failed to qualify the same.

22. The denial of regularization of service is a recurring cause of action and thus bar of limitation does not apply.

23. In view of the discussion above, the workmen are not entitled to regularization and the demands raised in the demand notice dated 20.04.2016 are neither genuine nor justified.

24. Accordingly, issue No.2 is decided against the workers' union and in favour of the management.

Issue No. 1 :

25. Onus to prove this issue is on the management. Learned Law Officer for the management argued that the workmen have already sought regularization of their services by filing O.A. 1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, which was decided *vide* order dated 24.05.2006 wherein the relief of regularization of their service was declined. The workmen did not challenge the order dated 24.05.2006 before any higher court. Thus, order dated 24.05.2006 has become binding on the workmen. The workmen cannot re-agitate the same issue before this Court / Tribunal. The workmen are seeking the same relief of regularization before this Court / Tribunal which is barred by the principle of Res-judicata.

26. On the other hand, learned representative for the workers' union argued that the workmen were appointed on contractual basis in December 1998. When the workmen filed OA No.1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, at that time they did not complete ten years of service. Now the workmen have completed 10 years of service in the December 2008 and therefore they have become eligible for regularization.

27. To my opinion as discussed in issue No. 2, the workmen failed to qualify the selection process for regular post, therefore, without qualifying the requisite test for the selection process the workmen are not entitled for regularization though they completed more than 10 years of service on contractual basis. There is no provision whereby the employees appointed on contractual basis are exempted from qualifying the selection process on merits.

28. The order dated 24.05.2006 is passed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench. The said order is passed by the Tribunal. The Administrative Tribunal is distinguishable from the ordinary courts with regard to its jurisdiction and procedure. It exercises jurisdiction only in relation to the service matter of the parties covered by the Act. It is also free from the shackles of many of the technicalities of the ordinary courts. Thus, the principle of Res-judicata as articulated by Section 11 Code of Civil Procedure is not attracted.

29. Accordingly, this issue is decided against the management and in favour of the workers' union.

Relief :

30. In the light of findings on the issue No. 2 above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

Dated 16th August, 2022.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9365-HII(2)-2022/14569.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 10/2017 dated 16.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT GENERAL SECRETARY, C.T.U. WORKER'S UNION, CHANDIGARH
(Workers' Union)

AND

1. THE SECRETARY TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, UNION TERRITORY CHANDIGARH.
2. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, CHANDIGARH (Management)

referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9365-HII(2)-2017/3941-A, dated 22.02.2017.

AWARD

1. *Vide* Endorsement No.13/1/9365-HII(2)-2017/3941-A Dated 22.02.2017 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 20.04.2016 raised by the President / General Secretary, C.T.U. Worker's Union, Chandigarh (hereinafter in short referred "workers' union") upon the Secretary Transport, Chandigarh Transport Undertaking, U.T. Chandigarh and the Divisional Manager, Chandigarh Transport Undertaking, Chandigarh & Director Transport, U.T. Chandigarh (*hereinafter in short referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID Act"*) in following words :—

"Whether the demand raised in the demand notice dated 20.04.2016 by President / General Secretary, C.T.U. Worker's Union, Chandigarh to (i) The Secretary Transport, Chandigarh Transport Undertaking, Union Territory, Chandigarh (ii) The Divisional Manager, Chandigarh Transport Undertaking, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union / Workers are entitled to, if any ?"

2. Upon notice, the workers' union appeared through its representative Shri Vishal Gupta, who on 16.10.2017 made the statement that the demand notice dated 20.04.2016 may be treated as statement of claim. Accordingly, the demand notice dated 20.04.2016 was ordered to be treated as statement of claim. Briefly stated the facts of statement of claim are that a meeting of the workers' union was held on 20.04.2016 regarding regularization of Drivers namely :—

- (i) Iqbal Singh S/o Shri Mewa Singh, D.No.26A;
- (ii) Zora Singh S/o Shri Gurdial Singh, D.No.11A;
- (iii) Harchand Singh S/o Shri Ajmer Singh, D.No.28A;
- (iv) Harchand Singh S/o Shri Sewa Singh, D.No.39A;
- (v) Harnek Singh S/o Shri Jodh Singh, D.No.13A;
- (vi) Mohan Lal S/o Shri Baru Ram, D.No.29A;
- (vii) Harbans Singh S/o Shri Piara Singh, D.No.31A;
- (viii) Balwant Singh S/o Shri Piara Singh, D.No.51A;
- (ix) Harjit Singh S/o Shri Sajjan Singh, D.No.19A;
- (x) Avtar Singh S/o Shri Mehar Singh, D.No.48A;

- (xi) Jarnail Singh S/o Shri Rachan Singh, Ex.D.No.34A and
- (xii) Balwinder Singh (since deceased) through his LRs Harbhajan Kaur Wd/o Shri Balwinder Singh, Harwinder Singh and Simranjeet Singh, S/o Shri Balwinder Singh

The above named Drivers (*hereinafter called "workmen"*) were appointed in regular selection in December, 1998 and since then they are continuing in service till date, but they are being treated as temporary / contractual though they have served for more than 17 years of service, therefore, the workers' union has decided to file demand notice on their behalf. The workers' union has further authorised President and Secretary of the union to sign the necessary pleadings including demand notice and to engage the services of authorised representative to appear and represent the case on behalf of workers' union before the Assistant Labour Commissioner, U.T. Chandigarh as well as before the Presiding officer, Labour Court, U.T. Chandigarh.

3. In the year 1998 the management was facing the shortage of Drivers, therefore, requisition was sent to Employment Exchange and Sainik Board for sending names of eligible candidates for appointment, against the vacant posts of Drivers. The workmen along with others were sponsored for appointment of Drivers. The workmen were interviewed along with others by the selection committee and were selected for appointment of Drivers. All the workmen joined in the month of December, 1998. Though all the workmen were selected and appointed through proper channel and against the vacant posts but they were given appointment on temporary basis for 89 days. In the year 1999, the management was going to terminate the services of the workmen, therefore, they were forced to approach the Central Administrative Tribunal Chandigarh by way of O.A. No. 678/CH/1999 for stay against the illegal termination. In the said O.A. an order was passed to the effect that services of the Drivers-workmen be not terminated till the regularly selected Drivers are not appointed and all the regular posts are not filled. Thereafter the management allowed the workman to work against vacant posts till 30.05.2007 though vacant posts were still laying vacant. After the year 1999 the management appointed regular Drivers in the year 1999 to 2006 but the workmen continued to work regularly with effect from December, 1998 to 30.05.2007. The workmen challenged the illegal order of termination dated 30.05.2007 on the grounds that vacant posts were still laying vacant when services of the workmen were terminated and the termination is illegal and against the provisions of Section 25-F, 25-H and 25-N of the ID Act. The learned Labour Court set aside the order of illegal termination of the workmen and the workmen were reinstated with continuity of service and 50% and 25% back wages. The management challenged these orders of learned Labour Court before the Hon'ble High Court by way of Civil Writ Petition and the same were also dismissed. Thereafter, the management filed LPAs, which were admitted only qua quantum of back wages and claim regarding reinstatement with continuity was upheld and the same are still pending before Hon'ble High Court for adjudication. After interim order in LPAs management have allowed the workmen to rejoin their duties on 17.10.2014 and 05.03.2015 and till date all the workmen are working. In view of the above facts the workmen are deemed to be in continuing in service with effect from December, 1998 till date and have served continuously for more than 17 years against the vacant posts. On 10.04.2006 full bench of Hon'ble Supreme Court in case titled as 'Uma Devi' gave directions in para 53 of the judgment that all those employees who have completed 10 years of service even though their initial appointment was irregular are entitled for regularization of their service against vacant posts if they fulfill the eligibility for appointment. It was further made clear that eligibility for regularization is to be taken as the same was at the time of initial appointment as daily wagers, ad-hoc, temporary and contractual basis. In pursuance of above judgment of Hon'ble Supreme Court, Chandigarh Administration issued instructions dated 13.03.2015, in which it has been decided to regularize the services of all those employees who have completed 10 years continuous service. All the workmen have completed more than 10 years service in December, 2008, therefore, they are fully eligible for regularization of their services as per these instructions as well as judgment of Hon'ble Supreme Court passed in 'Uma Devi Case'. Cut off date of joining on temporary basis have been declared illegal by Hon'ble High Court of Punjab & Haryana in judgment as reported in 2001(3) SCT 321 and it has been held that for regularization the requisite number of years have to be seen on the date instruction are issued and cut off date of initial appointment cannot be imposed being in violation of Article 14 and 16 of the Constitution of India. The workmen have completed more than 17 years of service and have become overage for Government service elsewhere. Therefore, the workmen are entitled for regularization of their service due to acts and conducts of the management. It has been held in the judgment by the Hon'ble Supreme Court that the persons who have been working against the same post for 14 years they are entitled to regularization of their service because there is

presumption that work is of continuing nature and vacant post is lying vacant. The action of the management amounts to unfair labour practice because the management though selected the workmen as per rules against the vacant posts by regular selection but treating them contractual / daily wager for years together. Further the Drivers appointed after selection of the workmen have been given regular appointment and are enjoying the regular status, but the workmen though appointed earlier are being treated as appointed on daily wages basis. The workmen have made several requests to the management to regularize their service but the management has not taken any step in this respect till date. Hence, this demand notice. Prayer is made to regularize the services of the workmen on completion of 10 years of service from their initial appointment with effect from December, 2008 and to pay the difference of pay along with interest @12% per annum within 15 days from the receipt of the demand notice.

4. On notice, management No. 1 & 2 appeared through its authorized representative and contested the claim of the workers' union by filing joint written statement, wherein preliminary objections are raised on the ground that the present statement of claim is not maintainable and liable to be dismissed on the ground that the same has been preferred at highly belated stage. The workmen have no locus standi and cause of action to file the present claim as the terms and conditions of their appointment were very clear that they are appointed on the consolidated salary purely on temporary basis and it was made clear that these services are not liable to be regularized at any time during span of their service. The present claim statement is not maintainable and liable to be dismissed on the ground of Res-judicata as the workmen have already claimed their regularization through O.A. No. 1159/CH/2004 before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench which was disposed of *vide* order dated 24.05.2006 whereby the Hon'ble CAT has duly considered the issue of regularization and rejected the same. The workmen have not challenged this judgment and accepted the same and hence they have been working under the management on the same terms & conditions as envisaged in their appointment letter. If the workmen were aggrieved to the order dated 24.05.2006 then in that case they ought to have challenged the validity of the said order before the next higher court.

5. On merits, the facts regarding shortage of Drivers in the year 1998, requisition sent to Employment Exchange and Sainik Board for sending names of eligible candidate for appointment are admitted being a matter of record. However, it is stated that all the workmen were appointed on the contract basis and their services are not liable to be regularized at all. All the Drivers joined their services in the year 1998. The terms and conditions of the contract were very clear whereby it was clearly stipulated that the workmen are appointed only for a period of 89 days on the contract basis and they can be terminated at any time without assigning any notice. The services of all the contractual drivers were dispensed with *vide* office order passed in July, 1999 on completion of 89 days of their service but the workmen approached to the Hon'ble CAT by filing O.A.No.678/CH/1999 and O.A. No.1159/CH/2004 which passed an interim order dated 02.09.1999 whereby all the contractual Drivers were ordered to be allowed to work against their job till regular candidates became available and finally these O.As were decided *vide* order dated 30.01.2002 whereby the management was directed to allow work to the workmen against vacant post till regular incumbents. Thus, the workmen were allowed to work in compliance of the aforesaid judgment till the regular incumbents became available to the management. In this way, the workmen are forced employees of the management. It is admitted being matter of record that the management allowed the work to the workmen against vacant posts till 30.05.2007 and after the year 1999 the management appointed regular Drivers in the year 1999 to 2006 and the workmen challenged termination order dated 30.05.2017. It further admitted that the workmen are taken back in service in compliance with the award dated 27.02.2013 passed by this Court. It stated that all the workmen are taken back in service on the same terms and conditions only on the vacant post and if there is no vacant post with the management then their services can be dispensed with on filling of post of regular incumbents and their services are not regularized. The fact that after interim order in LPAs the management allowed the workmen to rejoin their duties on 17.10.2014 and 05.03.2015 and till date all these Drivers are working with the management is admitted being matter of record. It is further stated that the workmen have not been performing their duty continuously and they have been working with the management due to compliance of various judgments passed by the different courts of law from time to time. The judgment in the case of Uma Devi is not applicable in this case. The workmen are not entitled to get regularization in their services. The workmen are not regular employees of the management. They were appointed purely on the temporary basis and terms

and conditions of the contract were reduced in writing which were duly accepted by the workmen. They cannot claim the regularization in their service by the rule of estopples as they have accepted the terms and conditions of the contract by putting their signature. The regular employees of the management are working with the management because they were appointed on regular basis against the vacant and sanctioned post through the proper channel. Remaining averments of the statement of claim are denied being wrong. Prayer is made that the present claim statement may be dismissed with cost.

6. The workers' union filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed *vide* order dated 23.04.2018:—

1. Whether the reference is bad on account of *Res-judicata* ? OPM
2. Whether the demand raised in the demand notice dated 20.04.2016 by the workers' union is genuine and justified, if so, to what effect and to what relief the workers' union / workmen are entitled to, if any ? OPW
3. Relief.

8. In evidence the workers' union examined AW1 Harbans Singh, Driver No.31-A, who tendered his affidavit Exhibit 'AW1/A' along with documents i.e. appointment order bearing No.1517/ECD/HOD/CTU/93 dated 11.2.1998 *vide* Exhibit 'W1'; Chandigarh Administration Gazette (Extra.) notification dated 23rd April, 2013 *vide* which award dated 27th February, 2013 passed the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh in industrial dispute reference No.114/2009 between Harchand Singh, S/o Shri Ajmer Singh, Ex-Driver No.28-A, CTU, R/o Village Todar, Tehsil Kharar, District Mohali and the Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, Union Territory Chandigarh *vide* Exhibit 'W2'; copy of order dated 22.11.2013 passed by the Hon'ble High Court Punjab & Haryana at Chandigarh in CWP Nos.25684 to 25691 of 2013 titled Union Territory Chandigarh & Another Versus Presiding Officer, Industrial Tribunal and Labour Court, U.T. Chandigarh & Another *vide* Exhibit 'W3', copy of order dated January 16, 2015 passed by the Division Bench of Hon'ble High Court of Punjab & Haryana in LPA Nos.1315 to 1324 of 2014 (O&M) *vide* Exhibit 'W4' and attested copy of policy / scheme regarding regularization of daily wage / work charged employees working in various department of Chandigarh Administration circulated *vide* No.28/64/2013-IH(7)-2013/2645 dated 10.02.2014 *vide* Exhibit 'W5'. The workers' union also examined AW2 Daljit Singh, Senior Assistant, O/o Director Transport, Union Territory Chandigarh, who brought the summoned record i.e. attested copy of list of Drivers who were appointed on regular basis with effect from 01.01.2000 to 31.12.2019 *vide* Exhibit 'W6' and attested copy of information regarding vacant vacancy position in respect of Driver staff, CTU Chandigarh with effect from 01.01.2007 to 17.12.2019 *vide* Exhibit 'W7'. On 12.11.2021 the workman Harbans Singh closed the evidence.

9. On the other hand, the management examined MW1 Daljit Singh, Senior Assistant, Office of Director Transport & Divisional Manager, U.T. Chandigarh, who tendered into evidence his affidavit Exhibit 'MW1/A' along with documents i.e. attested copy of order No.1517/ECD/HOD/CTU/93 dated 11.12.1998 regarding appointment of Drivers in Chandigarh Transport Undertaking for a period of 89 days on contract basis Exhibit 'M1'; attested copy of order dated 24th May, 2006 passed by Hon'ble Central Administrative Tribunal in O.A. No.1159/CH/2004 titled Lakhbir Singh S/o Shri Mohidner Singh, 8-A & Others Versus Union of India through Home Secretary, U.T. Chandigarh & Others *vide* Exhibit 'M2' and attested copy of order dated 02.09.1999 passed by the Hon'ble Central Administrative Tribunal in O.A. No.678-CH-99 *vide* Exhibit 'M3'. On 16.08.2022 learned Law Officer for the management closed the evidence.

10. I have heard the arguments of learned representative for the workers' union and learned Law Officer for the management No.1 & 2 and perused the judicial file. My issue-wise finding are as below:-

Issue No. 2 :

11. Onus to prove this issue is on the workers' union. The issues are overlapping, thus issue No.2 is taken up first.

12. Under this issue, the workers' union examined AW1 Harbans Singh, Driver No.31-A, CTU, who *vide* his affidavit Exhibit 'AW1/A' deposed all the material contents of demand notice-cum-statement of claim and supported his oral version with documents Exhibit 'W1' to 'W5'. For corroboration the workers' union examined AW2 Daljit Singh - Senior Assistant, Office of District Transport, U.T. Chandigarh, who deposed that he is summoned witness and dealing with the Driver seat since 2016 and know all the rules and regulations and instructions as passed by Chandigarh Administration. He has brought the summoned record. As per record, 17 Drivers in the year 2001, 51 Drivers in the year 2002, 38 Drivers in the year 2003, 2 Drivers in the year 2004, 67 Drivers in the year 2005, 66 Drivers in the year 2006, 37 Drivers in the year 2007, 6 Drivers in the year 2008, 123 Drivers in the year 2009-10, 88 Drivers in the year 2011 to 2014, 21 Drivers in the year 2015, 110 Drivers in the year 2016-17, 4 Drivers in the year 2018 and 1 Driver in the year 2019 were appointed on regular basis. All the Drivers mentioned in the present case i.e. Iqbal Singh & others were appointed through Employment Exchange against the vacant post of Driver on contract basis. AW2 supported his oral versions with documents Exhibit 'W6' and 'W7'.

13. On the other hand, the management examined MW1 Daljit Singh - Senior Assistant Office of Director Transport and Divisional Manager, U.T. Chandigarh, who *vide* his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement and supported his oral version with documents Exhibit 'M1' to 'M3'.

14. From the oral as well documentary evidence led by the parties, it comes out that undisputedly the workman were initially appointed on contract basis for 89 days *vide* appointment order No.1517/ECD/HOD/CTU/98 dated 11.12.1998 / Exhibit 'W1'. As per condition No.1 of Exhibit 'W1' the candidates mentioned at serial No.1 to 31 were sponsored through the Regional Employment Exchange, U.T. Chandigarh and Zila Sainik Welfare Office, U.T. Chandigarh and interviewed on 05.12.1998 to 07.12.1998 and offered appointment of Drivers in the CTU for a period of 89 days on contractual basis. As per condition No. 2 of Exhibit 'W1' their services shall automatically stands terminated after expiry of 89 days or on joining of a regular incumbent whichever is earlier without assigning any notice and no compensation of any type will be admissible to them on account of termination of their services. As per condition No. 3 of Exhibit 'W1' during the period of appointment they will get a consolidated salary of ₹ 2,462/- per month as fixed by the Deputy Commissioner, U.T. Chandigarh for daily wages employees. Further there is no dispute with regard to the fact that on completion of 89 days of services, the services of all the employees were dispensed with *vide* office order July, 1999. On aggrieved from order July, 1999, the workman approached the Central Administrative Tribunal, Chandigarh Bench by filing OA NO.678/CH/1999 and OA No.1159/CH/2004. In OA No.678/CH/1999 interim order dated 02.09.1999 / Exhibit 'M3' was passed. The relevant portion of order dated 02.09.1999 / Exhibit 'M3' is reproduced as below :—

"Considering the law on this point, we modify earlier order dated 20th July, 1999 and direct the respondents to allow the applicants to work against those jobs / posts, as per their seniority, till regularly selected candidates become available with further direction that they shall not be replaced by other adhoc employees."

15. OA No.1159/CH/2004 was decided *vide* order dated 24.05.2006 passed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench / Exhibit 'M2' whereby the applicants' prayer for regularization was rejected. The applicants in OA No.1159/CH/2004 were allowed to continue to work as Driver against vacant posts till regular candidates join. The order dated 24.05.2006 / Exhibit 'M2' has not been challenged by any of the workman. Thereafter the management allowed the workman to work against vacant posts till 30.05.2007. After year 1999 during the period year 1999 to 2006 the management appointed regular Drivers, however, the workmen continued to work with effect from December 1998 to 30.05.2007. The workmen were terminated on 30.05.2007. The workman challenged the termination order dated 30.05.2007 before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh which was decided *vide* award dated 27.02.2003 passed by the Presiding Officer, Industrial Tribunal and Labour Court, U.T. Chandigarh bearing reference No.114/2009. As per the notification Exhibit 'W2' wherein award dated 27.02.2013 is published, the reference was allowed and answered in favour of the workman directing the management to reinstate the workman on the same post on the same terms and conditions with continuity of service and 50% back wages. The CTU challenged the award dated 27.02.2013 filing Civil Writ Petition Nos.25684 to 25691 of 2013 tilted as

Union Territory Chandigarh & Another Versus Presiding Officer, Industrial Tribunal and Labour Court, Union Territory Chandigarh & Another. The said writ petitions were dismissed by the Hon'ble High Court of Punjab and Haryana vide order dated 22.11.2013. The appellants Union Territory Chandigarh and another filed Letters Patent Appeal against the award dated 17.02.2013 passed by the Industrial Tribunal and Labour Court and order dated 18.11.2013 passed by the Hon'ble High Court in CWP No.25131 of 2013. In LPA No.1315 of 2014 in CWP No.25131 of 2013 order dated 16.01.2015 / Exhibit 'W4' was passed. The relevant portion of order dated 16.01.2015 / Exhibit 'W4' is reproduced as below :—

"In the facts and circumstances of the case and in view of the previous orders issuing notice of motion, there is no warrant for staying the order of reinstatement.

The only question relates to back wages.

The judgment so far it orders the payment of 50% back wages shall remain stayed subject to the appellants paying the respondents 25% of back wages by 31.03.2015."

After order dated 16.01.2015 / Exhibit 'W4', the management allowed the workman to rejoin their duties on 17.10.2014 and 05.03.2015 and till date all these workmen are working as Drivers with the management.

16. The dispute between the parties is confined to the fact that the workers' union is claiming that the workmen / Drivers are deemed to be in continuing in service with effect from December 1998 till date and they have served continuously for more than 17 years against the vacant posts. In view of the directions given in para 53 of the judgment of ***Hon'ble Supreme Court in Secretary, State of Karnataka & Another Versus Uma Devi & Others, in Appeal (Civil) No.3595-3612 of 1999 decided on 10.04.2006***, all the employees who have completed ten years of service even though their initial appointment was irregular are entitled for regularization of their services against the vacant post if they fulfill the eligibility for appointment. The management has opposed the aforesaid plea of the workers' union on the ground that the judgment in case of Uma Devi is not applicable in this case the workmen were appointed purely on temporary basis and terms and conditions of the contract were reduced in writing which were duly accepted by them. Now the workmen cannot claim the regularization in their services by virtue of principle of estoppel. Moreover, the workman has already claimed their regularization through OA 1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench wherein the issue of regularization was considered and rejected. To support his contentions learned Law Officer of the management referred para 13 of the order dated 24.05.2006 / Exhibit 'M2' passed by the Central Administrative Tribunal, Chandigarh Bench. Relevant portion para 13 of Exhibit 'M2' is reproduced as below :—

"13. So far the plea of the applicants for their regularisation is concerned, keeping in view the latest decision of the Apex Court on this issue, we are unable to give directions to the respondents to regularize their services, irrespective of the fact that they have been working with the respondents for more than 7-8 years on contract basis.

Moreover, they were afforded opportunity and, in fact, participated in the selection process, but could not qualify therein. Therefore, on this ground also, their plea of regularization falls on the ground."

17. As per the policy / scheme regularization of daily wage / work charge employee working in various departments of Chandigarh Administration issued by Chandigarh Administration, Department of Personnel, dated 10.02.2014 / Exhibit 'W5', the ***Hon'ble Supreme Court of India in the year 2006 in Civil Appeal No.3595-3612 of 1999 tilted State of Karnataka Versus Uma Devi*** observed that the State Government should take steps to regularize as a one time measure the services of such irregularly appointed employees who have worked for 10 years or more in duly sanctioned posts. The Government of Punjab in pursuance to the aforesaid judgment of the Hon'ble Supreme of India has issued policy instructions

regarding regularization of workers working in different department on work-charge / daily wage basis, who have completed 10 years of service up to December 2006 *vide* letter No.11/8/2009-4PP3/397-98 dated 18.03.2011 provided they fulfill the requisite educational qualifications. In view of policy / scheme Exhibit 'W5' the workers in different department on work charge / daily wage basis were eligible for regularization if they have completed 10 years of service up to December, 2006. In the present case, the workmen were appointed on contractual basis in December 1998 and they completed only 8 years of service in December 2006. Thus, their service of 10 years was not complete up to December 2006. When the workmen filed OA No.1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, even at that time they did not complete ten years of service. Learned representative for the workers' union contended that the workmen have completed 10 years of service in the December 2008 and now they have become eligible for regularization. Learned representative for the workers' union argued that the cut off date of the joining on temporary basis has been declared illegal by our Hon'ble High Court in judgment reported as **2001(3) SCT 321 titled as Beant Kaur Versus State of Punjab** wherein it has been held that for regularization the requisite number of years have to be seen on the date of instructions are issued and cut off date of initial appointment cannot be imposed being in violation of the Constitution of India. To my opinion, the law laid down in the judgment referred titled **Beant Kaur Versus State of Punjab (supra)** is well recognized by this Court but the ratio of ruling is not applicable to the facts of the present case. Apart from completion of 10 years of service the workmen are required to qualify the selection process. The workers' union own witness AW2 Daljit Singh in his cross-examination stated that the procedure for regular Driver is first the department advertise the post through newspaper (Employment News), thereafter written test is to be conducted and the candidate to pass has to undergo the process as per merit. These workmen have not undergone the written test. The workers' union own witness AW1 Harbans Singh, Driver No.31-A when put to cross-examination admitted as correct that he was given opportunity at the time of regular appointment but he was declared unsuccessful. From the aforesaid version of AW1, it is duly proved on record that the workmen were provided with an opportunity to participate in the selection process but they failed to qualify the same.

18. The denial of regularization of service is a recurring cause of action and thus bar of limitation does not apply.

19. In view of the discussion above, the workmen are not entitled to regularization and the demands raised in the demand notice dated 20.04.2016 are neither genuine nor justified.

20. Accordingly, issue No.2 is decided against the workers' union and in favour of the management.

Issue No.1 :

21. Onus to prove this issue is on the management. Learned Law Officer for the management argued that the workmen have already sought regularization of their services by filing O.A. 1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, which was decided *vide* order dated 24.05.2006 wherein the relief of regularization of their service was declined. The workmen did not challenge the order dated 24.05.2006 before any higher court. Thus, order dated 24.05.2006 has become binding on the workmen. The workmen cannot re-agitate the same issue before this Court / Tribunal. The workmen are seeking the same relief of regularization before this Court / Tribunal which is barred by the principle of *Res-judicata*.

22. On the other hand, learned representative for the workers' union argued that the workmen were appointed on contractual basis in December 1998. When the workmen filed OA No.1159/CH/2004 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, at that time they did not complete ten years of

service. Now the workmen have completed 10 years of service in the December 2008 and therefore they have become eligible for regularization.

23. To my opinion as discussed in issue No.2, the workmen failed to qualify the selection process for regular post, therefore, without qualifying the requisite test for the selection process the workmen are not entitled for regularization though they completed more than 10 years of service on contractual basis. There is no provision whereby the employees appointed on contractual basis are exempted from qualifying the selection process on merits.

24. The order dated 24.05.2006 is passed by the Hon'ble Central Administrative Tribunal, Chandigarh Bench. The said order is passed by the Tribunal. The Administrative Tribunal is distinguishable from the ordinary courts with regard to its jurisdiction and procedure. It exercises jurisdiction only in relation to the service matter of the parties covered by the Act. It is also free from the shackles of many of the technicalities of the ordinary courts. Thus, the principle of Res-judicata as articulated by Section 11 Code of Civil Procedure is not attracted.

25. Accordingly, this issue is decided against the management and in favour of the workers' union.

Relief :

26. In the light of findings on the issue No.2 above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

Dated 16th August, 2022.

(Sd.) . . .,
(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Usha, W/o Brahm Parkash, R/o # 1131, Sector 7-B, Chandigarh, have changed my name to Usha Rani.

[831-1]

I, Ajit Singh Kataria, S/o Late Sh. Sohan Singh, R/o 526-B, Sector 29-A, Chandigarh, have changed my name from Ajit Singh Kataria to Ajit Singh.

[832-1]

I, Harpal Singh, S/o Nahar Singh Sekhon, R/o 262, Sector 32-A, Chandigarh, have changed my name to Harpal Singh Sekhon.

[833-1]

I, Kali Charan, S/o Surinder, R/o 245-B, Mauli Jagran, Chandigarh, have changed my name to Deepak Pohal.

[834-1]

I, Rajni Sharma, W/o Radha Krishan, # 28/2, Buterla, Sector 41-B, Chandigarh, changed my name Urmila.

[835-1]

I, Ruby, D/o Meeta Ram, # 4775/3, Sector 38 West, Chandigarh, have changed my name to Ruby Devi.

[836-1]

I, Rekha, W/o Meeta Ram, # 4775/3, Sector 38 West, Chandigarh, have changed my name to Bholi Devi.

[837-1]

I, Asma Parveen, W/o Margoob Alam, R/o H. No. 1586, Mauli Jagran Complex, Chandigarh, have changed my name from Asma Parveen to Aasma Begam.

[838-1]

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